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Y&Y Property Development Sdn Bhd v City-Lite Letrik Sdn Bhd

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HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO 24C (ARB)-9–06 OF 2014
AZIZUL AZMI JC
31 JULY 2014

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Arbitration — Agreement — Enforcement of — Application for stay of another action — Stipulation that other action ought to be resolved by way of arbitration — Whether arbitration agreement existed — Whether action ought to be stayed — Arbitration Act 2005 ss 10 & 18

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The applicant was the defendant in another suit and had applied for a stay of the other action, pursuant to s 10 of the Arbitration Act 2005, as it contended that the dispute in the other action ought to be resolved by way of arbitration in accordance with an arbitration agreement between the parties. The respondent and the plaintiff in the other action, disputes the existence of the arbitration agreement. The applicant was a property development company that undertook the development of a shopping complex and in turn, appointed Pembinaan Sumber Emas Sdn Bhd as the main contractor for the project ('the main contractor'). The applicant and the main contractor had entered into an agreement the form of which was published by Pertubuhan Arkitek Malaysia. The main contract contains an arbitration clause. The main contractor in turn had appointed City-Lite as a subcontractor to supply, install, test and commission electrical and telecommunication services for the project. For this purpose, the main contractor and City-Lite executed an agreement ('the subcontract'). The subcontract also contained an arbitration clause. The applicant and the respondent entered into a collateral agreement, establishing a direct contractual relationship between them. The form of this collateral agreement was prescribed as an appendix to the subcontract. The purpose of the collateral agreement was to, inter alia, provide for certain warranties from the respondent as the sub-contractor to the applicant as the employer of the project, and to ensure that payments were made directly from the applicant to the respondent without passing through the hands of the main contractor. It was submitted that, in the course of the construction of the project, the main contractor withdrew from, and was no longer involved in, the project. The applicant then took over the role of the main contractor. There was no novation agreement entered into with respect to the subcontract.

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Held, dismissing the application:

(1) No arbitration agreement existed between the parties. The mere specification of the name of the employer cannot by any stretch of the imagination be construed as making it a party to the subcontract. On the contrary, cl 2.4 of the conditions of subcontract made it clear that the subcontract did not create any privity of contract between Y&Y as the employer and City-Lite as the subcontractor (see paras 9 & 13).

(2) The collateral agreement did not contain an arbitration clause. That the collateral agreement was physically bound to the subcontract did not mean that from a legal perspective, the collateral agreement forms part of the subcontract. It was not sufficient for an agreement to simply refer to another document that contained an arbitration clause. That reference must be of a nature that makes the arbitration clause part of the subject agreement (see para 15, 17 & 22).

(3) There was no need for there to be a specific or express reference to the arbitration clause. It sufficed if, for example, the subject agreement provides that the terms of another agreement will apply to the subject agreement, thereby incorporating by reference all the terms of that other agreement, including its arbitration clause (see para 23).

(4) Reading the plain words of the recital, the words stating that the subcontract works formed part of the main contract works simply describe the surrounding facts and provide context to the collateral agreement. Those words did not constitute any statement providing for a particular legal consequence, and certainly could not be said to have incorporated by reference the terms of the subcontract into the collateral agreement. This was consistent with the nature of recitals generally, which were typically not intended to be operative provisions in a contract (see para 29).

(5) Even if this case was remitted to an arbitral tribunal for it to exercise the powers conferred by s 18 of the Arbitration Act 2005 and to determine the extent of its jurisdiction in this matter, the tribunal will come to same conclusion as this court, resulting in the respondent, as the plaintiff in the other action, having to eventually file a fresh action. The balance of convenience here would therefore be in favour of the respondent (see para 37).

[Bahasa Malaysia summary

Pemohon adalah defendan dalam lagi satu guaman dan telah memohon untuk penangguhan tindakan yang lain, berikutan s 10 Akta Timbang Tara 2005, kerana ia menghujahkan bahawa pertikaian dalam tindakan yang lain sepatutnya diselesaikan melalui timbang tara menurut satu perjanjian timbang tara antara pihak-pihak. Responden dan plaintif dalam tindakan yang lain, mempertikaikan kewujudan perjanjian timbang tara. Pemohon adalah syarikat pembangunan hartanah yang menerima pembangunan kompleks

membeli-belah dan sebagai balasan, melantik Pembinaan Sumber Emas Sdn Bhd sebagai kontraktor utama untuk projek tersebut ('kontraktor utama'). Pemohon dan kontraktor pertama telah memasuki perjanjian yang mana telah diterbitkan oleh Pertubuhan Arkitek Malaysia. Kontrak utama mengandungi klausa timbang tara. Kontraktor utama telah melantik City-Lite sebagai subkontraktor untuk membekalkan, memasukkan, menguji dan komisen servis elektrik dan telekomunikasi untuk projek itu, Untuk tujuan ini, kontraktor utama dan City-Lite melaksanakan satu perjanjian ('subkontrak'). Subkontrak itu juga mengandungi klausa timbang tara. Pemohon dan responden memasuki perjanjian kolateral, menubuhkan satu hubungan kontrak langsung antara mereka. Penubuhan perjanjian kolateral dinyatakan sebagai satu lampiran kepada subkontrak. Tujuan perjanjian kolateral adalah untuk, antara lain, memperuntukkan waranti tertentu daripada responden sebagai subkontraktor kepada pemohon sebagai majikan projek itu, dan untuk memastikan bahwa bayaran dibuat terus daripada pemohon kepada perayu tanpa melalui tangan kontraktor utama. Adalah dikemukakan bahawa, dalam pembinaan projek itu, kontraktor utama menarik diri, dan tidak lagi terlibat di dalam projek. Pemohon kemudian mengambil alih peranan kontraktor utama. Tiada perjanjian novasi yang dimasuki berkaitan dengan subkontrak.

Diputuskan, menolak permohonan:

(1) Tiada perjanjian timbang tara wujud antara pihak-pihak. Hanya spesifikasi nama majikan tidak boleh dianggap untuk diertikan sebagai, menjadikan ia satu pihak kepada subkontrak. Sebaliknya, klausa 2.4 syarat-syarat subkontrak dengan jelas menyatakan bahawa subkontrak tidak membentuk apa-apa priviti kontrak antara Y&Y sebagai majikan dan City-Lite sebagai subkontraktor (lihat perenggan 9 & 13).

(2) Perjanjian kolateral tidak mengandungi klausa timbang tara. Bahawa perjanjian kolateral terikat secara fizikal kepada subkontrak tidak bermaksud daripada perspektif undang-undang, perjanjian kolateral membentuk sebahagian subkontrak. Ia tidak mencukupi untuk satu perjanjian untuk hanya merujuk kepada satu lagi dokumen yang mengandungi klausa timbang tara. Bahawa rujukan mestilah daripada jenis yang menjadikan klausa timbang tara sebahagian daripada perjanjian subjek (lihat perenggan 15, 17 & 22).

(3) Tiada keperluan untuk adanya rujukan spesifik atau nyata terhadap klausa timbang tara. Ia mencukupi sekiranya, sebagai contoh, perjanjian subjek memperuntukkan bahawa terma-terma perjanjian lagi satu akan terpakai kepada perjanjian subjek, dengan itu memasukkan melalui rujukan kesemua terma perjanjian lain, termasuk klausa timbang taranya (lihat perenggan 23).

(4) Membaca perkataan biasa recital, perkataan-perkataan yang menyatakan bahawa subkontrak membentuk sebahagian kerja-kerja kontrak utama

hanyalah menggambarkan keseluruhan fakta dan menerangkan konteks perjanjian kolateral. Perkataan-perkataan itu tidak membentuk apa-apa kenyataan memperuntukkan untuk satu akibat undang-undang yang tertentu, dan tentu sekali tidak boleh dikatakan telah dimasukkan melalui rujukan terma-terma subkontrak ke dalam perjanjian kolateral. Ini adalah konsisten dengan jenis recital secara amnya, yang mana kebiasaannya tidak bertujuan untuk menjadi proviso operatif di dalam satu kontrak (lihat perenggan 29).

(5) Walaupun jika kes ini diremitkan ke tribunal timbang tara untuk ia menjalankan kuasanya termaktub oleh s 18 Akta Timbang Tara 2005 dan untuk mementukan skop bidang kuasanya dalam perkara ini, tribunal akan mendapati kesimpulan yang sama seperti mahkamah ini, yang menyebabkan responden, sebagai plaintif di dalam tindakan lain, akhirnya dikehendaki memfailkan tindakan baru. Imbangan kemudahan di sini akan oleh itu berpihak kepada responden (lihat perenggan 37).]

Notes

For cases on enforcement of, see 1(1) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 1563–1564.

Cases referred to

Albilt Resources Sdn Bhd v Casaria Construction Sdn Bhd [2010] 3 MLJ 656, CA (refd)

Alfred Templeton & Ors v Low Yat Holdings Sdn Bhd & Anor [1989] 2 MLJ 202; [1989] 1 CLJ Rep 219, HC (refd)

City and Westminster Properties (1934) Ltd v Mudd [1959] Ch 129, Ch D (refd)

CMS Energy Sdn Bhd v Poscon Corp [2008] 6 MLJ 561, HC (refd)

TNB Fuel Services Sdn Bhd v China National Coal Group Corp [2013] 4 MLJ 857, CA (distd)

Legislation referred to

Arbitration Act 2005 ss 9, 9(1), (3), (4), (5), 10, 10(1), 18

Azizul Azmi JC:

INTRODUCTION

[1] The applicant, Y&Y Property Development Sdn Bhd ('Y&Y'), is the defendant in another suit before this court (Civil Suit No 22C-28–05 of 2014), and has applied, through this action, for a stay of the other action, pursuant to s 10 of the Arbitration Act 2005, as it contends that the dispute in the other action ought to be resolved by way of arbitration in accordance with an

arbitration agreement between the parties.

[2] The respondent, City-Lite Letrik Sdn Bhd ('City-Lite') and the plaintiff in the other action, disputes the existence of the arbitration agreement.

BACKGROUND FACTS

[3] Y&Y is a property development company that undertook the development of a shopping complex in Taman Shamelin. It appointed Pembinaan Sumber Emas Sdn Bhd as the main contractor for the project ('the main contractor'). In this connection, Y&Y and the main contractor had on 16 May 2007 entered into an agreement entitled agreement and conditions of building contract, private edition without quantities, the form of which is published by Pertubuhan Arkitek Malaysia ('PAM'). I refer to this agreement in this judgment as 'the main contract'.

The main contract contains an arbitration clause

[4] The main contractor in turn had appointed City-Lite as a subcontractor to supply, install, test and commission electrical and telecommunication services for the project. For this purpose, on 29 September 2008, the main contractor and City-Lite executed an agreement entitled Agreement and Conditions of Building Sub-Contract (Private Edition), which agreement I will refer to as 'the subcontract'.

The subcontract also contains an arbitration clause

[5] Y&Y and City-Lite thereafter on 24 February 2009 entered into a collateral agreement, establishing a direct contractual relationship between them. The form of this collateral agreement is prescribed as an appendix to the subcontract. The purpose of the collateral agreement, as I surmise from its contents, is to, inter alia, provide for certain warranties from City-Lite as the subcontractor to Y&Y as the employer of the project, and to ensure that payments are made directly from Y&Y to City-Lite without passing through the hands of the main contractor.

[6] It is pertinent to note at this point that the collateral agreement is a five page document and makes references *passim* to the main contract. The collateral agreement does not contain an arbitration agreement within the meaning of the Arbitration Act 2005.

[7] It was submitted (and not disputed) that, in the course of the construction of the project, the main contractor withdrew from, and was no

longer involved in, the project. Y&Y then took over the role of the main contractor. There was no novation agreement entered into with respect to the subcontract.

[8] Subsequently, disputes arose between Y&Y and City-Lite, which became the subject of the other action before this court. Y&Y has now applied for a stay of that other action, on the basis that (it contends) there exists an arbitration agreement between the parties, and that accordingly I am obliged to grant a final stay of that other action pursuant to s 10(1) of the Arbitration Act 2005.

DECISION

[9] I am of the view that no arbitration agreement exists between the parties. Accordingly the application by Y&Y for the stay of Civil Suit No 22C-28–05 of 2014 is dismissed. Each party shall bear their own costs in this current action. The reasons for my decision are set out in the following paras.

[10] Section 10(1) of the Arbitration Act 2005 provides:

> (1) A court before which proceedings are brought in respect of a matter which is the subject of an arbitration agreement shall, where a party makes an application before taking any other steps in the proceedings, stay those proceedings and refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

[11] The issue is therefore whether the dispute between the parties arising from the collateral agreement in Civil Suit No 22C-28–05 of 2014 is subject to an arbitration agreement. If it is, then I am obliged by s 10(1) to stay the proceedings in that other action and to refer the parties to an arbitrator for the settlement of their dispute. The expression 'arbitration agreement' is defined in s 9(1) of the Arbitration Act 2005 as:

> an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

Is the applicant a party to the subcontract?

[12] It is apposite at this point to deal with one of the arguments put forward by the counsel for the applicant, which is that the applicant Y&Y is a party to the subcontract due to the fact that the preamble to the subcontract spells out the name of the applicant name as a party. If Y&Y is a party to the subcontract, then an arbitration agreement would exist, by virtue of cl 22 of the subcontract. The relevant portions of the preamble to the subcontract provide as follows:

> This Agreement is made the 29 day of SEPTEMBER 2008 between PEMBINAAN SUMBER EMAS SDN BHD of (or whose registered office is situated at) Block 46-E7 Mentari Business Park Jalan PSS 8/2 Dataran Mentari 46150 Petaling Jaya (hereinafter called 'the Contractor') of the one part and CITY-LITE LETRIK SDN BHD of (or whose registered office situated at) 12 Jalan 3/91A Taman Shamelin Perkasa Cheras 56100 Kuala Lumpur (hereinafter called 'the Sub-Contractor') of the other part.
>
> Supplemental to an Agreement (hereinafter referred to as 'the Main Contract') made the ... day of ... between Y & Y PROPERTY DEVELOPMENT SDN BHD (hereinafter called 'the Employer') of the first part and the Contractor of the second part.

[13] It is plain to me that the name of Y&Y has been referred to in the subcontract simply to provide the proper factual context for the commercial arrangements pertaining to the project, and that the mere specification of the name of the employer cannot by any stretch of the imagination be construed as making it a party to the subcontract. On the contrary, cl 2.4 of the conditions of subcontract makes it clear that the subcontract does not create any privity of contract between Y&Y as the employer and City-Lite as the subcontractor.

[14] As it is established that Y&Y is not a party to the subcontract, I now consider whether an arbitration agreement otherwise exists between the parties.

Does an arbitration agreement exist?

[15] The collateral agreement does not contain an arbitration clause. Accordingly, the question then arises whether an arbitration agreement could be said to exist between the parties by virtue of either:

(a) the collateral agreement forming part of the main contract and/or the subcontract on its true construction; or

(b) the terms of the subcontract becoming binding on the parties as a result of the conduct of the parties following the withdrawal of the main contractor.

These are considered in turn.

Is the collateral agreement part of the main contract or the subcontract?

[16] Counsel for applicant submits that the collateral agreement forms part of, is subject to, and must be read conjunctively with, the main contract and/or the subcontract for the following reasons:

(a) the collateral agreement is attached to and bound together as part of the volume of the subcontract; and

(b) the collateral agreement makes references passim to the main contract and the subcontract, and that accordingly the terms of the main contract and/or the subcontract have been incorporated by reference into the collateral agreement.

[17] That the collateral agreement is physically bound to the subcontract does not mean that, from a legal perspective, the collateral agreement forms part of the subcontract. This argument need not detain me any further, except for me to confirm that I reject it.

Incorporation by reference

[18] The next question is whether, by virtue of the references in the collateral agreement to the main contract and the subcontract, the terms of these other contracts (including the arbitration clauses contained in them) are incorporated by reference into the collateral agreement.

[19] Counsel for the applicant has enumerated all the circumstances in which either the main contract or the subcontract was referred to in the collateral agreement. These, the learned counsel for the applicant argues, when read together with s 9(5) of the Arbitration Act 2005 and the decisions of the Court of Appeal in *TNB Fuel Services Sdn Bhd v China National Coal Group Corp* [2013] 4 MLJ 857 and *Albilt Resources Sdn Bhd v Casaria Construction Sdn Bhd* [2010] 3 MLJ 656, result in the arbitration clause in the subcontract being incorporated by reference into the collateral agreement. I note in passing that, in the course of submissions, the counsel for the applicant abandoned the argument that the arbitration clause in the main contract has been incorporated into the collateral agreement, and restricted his arguments to the arbitration clause in the subcontract.

[20] Section 9(5) of the Arbitration Act 2005 provides:

> A reference in an agreement to a document containing an arbitration clause shall constitute an arbitration agreement, provided that the agreement is in writing and the reference is such as to make that clause part of the agreement.

[21] In order for an incorporation by reference to be effective under s 9(5), the following conditions must be met:

(a) there must be a reference in the subject agreement to another document that contains an arbitration clause;

(b) that subject agreement must be in writing; and

(c) the reference in the subject agreement must have the effect of making the arbitration clause part of the subject agreement.

[22] It is not sufficient for an agreement to simply refer to another document that contains an arbitration clause. That reference must be of a nature that makes the arbitration clause part of the subject agreement — in other words, incorporating it by reference. As such, where the collateral agreement refers, for example, at para A(2) to events that are described or referred to in cl 8.2 of the subcontract, this will not have the effect of incorporating the arbitration clause in the subcontract into the collateral agreement.

[23] Note that there is no need for there to be a specific or express reference to the arbitration clause. It suffices if, for example, the subject agreement provides that the terms of another agreement will apply to the subject agreement, thereby incorporating by reference all the terms of that other agreement, including its arbitration clause.

[24] I am of the view that, in the present instance, the arbitration clause in the subcontract has not been incorporated by reference into the collateral agreement, notwithstanding the fact that there are references in the collateral agreement to the subcontract.

[25] In this regard, the decision of the Court of Appeal in *TNB Fuel Services Sdn Bhd* can be distinguished. There, the court found that the exchange of documents between the parties was sufficient to constitute a binding contract between them and that this contact in turn incorporated by reference the terms of a separate unsigned coal supply agreement, which contained an arbitration clause. In the present case, there was no wholesale incorporation of the terms of the subcontract.

[26] The facts of *Albilt Resources Sdn Bhd* bear closer examination. In this case, the main contractor issued a letter of award to a subcontractor (referred to in the judgment of Low Hop Bing JCA as the *June contract*), the terms of which included the following clauses (which I have edited for brevity and clarity):

> This contact executed based on the terms and conditions stipulated in the contract document between [the main contractor] and [the employer] and all correspondence including the Letter of Award between [the main contractor] and [the employer].
>
> The contract executed will be based on the terms and conditions stipulated in the contract document between [the main contractor] and [the employer]. The contract will based on the [PAM Contract], together with amendments, additions or modifications as mentioned above.

[27] Based on the facts, Low Hop Bing JCA held that, taking into account the relevant documents and reading the relevant passages liberally in line with the grammatical and ordinary meaning or the plain purposes of the words used by the parties:

> The plaintiff and the defendant, having executed the June contact, had in fact adopted and incorporated all other relevant documents specifically stipulated therein, including the PAM contract.

[28] The question in the present instance is whether the collateral agreement contained any similar clauses that could be said to have incorporated the terms of the subcontract into the collateral agreement. The only plausible provision is the recital to the collateral agreement, which provides:

> WHEREAS the sub-contractor has been invited to tender for the carrying out of The Supply, Installation, Testing & Commission of Electrical & Telecommunication Services (hereinafter called the 'Sub-Contract Works') as a Sub-Contractor nominated or to be nominated to a Contractor under the terms of the said Agreement and Schedule of Conditions of Building Contract issued under the sanction of Pertubuhan Arkitek Malaysia Form of Main Contract 1998 Edition (Without Quantities), *it being intended that the Sub-Contract Works form part of CADANGAN PEMBANGUNAN KOMPLEKS MEMBELI BELAH 7 TINGKAT YANG MENGANDUNGI LOT-LOT KEDAI, TEMPAT LETAK KERETA BERTINGKAT DAN 1 TINGKAT SUB-BASEMENT Dl ATAS LOT 11637 (4.43 EKAR), MUKIM WILAYAH PERSEKUTUAN, KL (hereinafter called the 'Main Contract Works')* to be carried out by Pembinaan Sumber Emas Sdn Bhd (hereinafter called the 'Main Contractor') under the terms of a Contract with the Employer providing for the payment by the Contractor of liquidated Damages for delay. (Emphasis added.)

[29] I am of the view that, reading the plain words of the recital, the words stating that the subcontract works form part of the main contract works simply describe the surrounding facts and provide context to the collateral agreement. These words do not constitute any statement providing for a particular legal consequence, and certainly cannot be said to have incorporated by reference the terms of the subcontract into the collateral agreement. This is consistent with the nature of recitals generally, which are typically not intended to be operative provisions in a contract.

[30] For the reasons cited in the preceding paras, I find that the collateral agreement does not incorporate either the main contract or the subcontract into its terms and that accordingly neither arbitration clauses in these agreements have been incorporated by reference into the collateral agreement.

Can the subcontract be incorporated by conduct?

[31] It was not disputed in evidence that, at some point prior to the completion of the project, the main contractor withdrew from the project and that Y&Y, as the employer, assumed the role of the main contractor. I had asked the parties to consider and to submit on the question whether the parties considered themselves to be bound by the terms of the subcontract during the period after the withdrawal of the main contractor. In other words, was the collateral agreement comprehensive enough to deal with the rights and obligations of the parties inter se, or did the parties have resort to the terms of the subcontract, with the attendant result that this contract now becomes binding on them? If the answer to the latter question is yes, can it be said that the arbitration clause contained in cl 22 of the subcontract is now binding on the parties?

[32] The court may, in certain circumstances, infer the existence of particular terms in a contract, where, for example, it is necessary in order to give efficacy to a transaction as both parties must have intended (see for example, *Alfred Templeton & Ors v Low Yat Holdings Sdn Bhd & Anor* [1989] 2 MLJ 202; [1989] 1 CLJ Rep 219). The terms of a contract may also be varied by the conduct of the parties (*City and Westminster Properties (1934) Ltd v Mudd* [1959] Ch 129).

[33] Learned counsel for Y&Y did produce letters between the parties, which he argues goes to show the intent of the parties to be bound by the terms of the subcontract. I am, with respect, unable to come to the same conclusion, and agree with the contention of the counsel for City-Lite that these letters merely refer to the subcontract, and do not go far enough to prove that the parties had intended for the subcontract to be binding between them. Moreover, the letters relate to a period after a dispute had arisen between the parties and, as was also pointed out by the counsel for the respondent, after the project was completed. The letters do not relate to the critical period between the withdrawal of the main contractor and the completion of the works for the project.

[34] Hypothetically speaking, even if I were to hold that the terms of the subcontract have been implied into the collateral agreement, the arbitration clause in cl 22 of the subcontract would not, in my view, constitute an 'arbitration agreement' within the meaning of s 9 of the Arbitration Act 2005, due to the requirement in s 9(3) for an arbitration agreement to be in writing. Section 9(4) further provides that an arbitration agreement is in writing where (among others) it is contained in a document signed by the parties. Accordingly, even if the terms of the subcontract could be said to be binding on the parties as a consequence of their conduct, the arbitration clause contained in the subcontract would not be effective as an arbitration agreement for the

purposes of the Arbitration Act 2005, due to the fact that the subcontract is not a document that has been signed by Y&Y and City-Lite.

[35] Section 9(5) would also not be of any assistance because this is not a circumstance where there is an incorporation by reference.

CONCLUSION

[36] I am aware that cases such as *TNB Fuel Services Sdn Bhd* and *CMS Energy Sdn Bhd v Poscon Corp* [2008] 6 MLJ 561 (a decision cited by His Lordship Ananthan Kasinather JCA in *TNB Fuel Services Sdn Bhd*) urge courts to lean in favour of arbitration. However, the present case is not one where an injunction is being sought to restrain an arbitral tribunal from ruling on the extent of its own jurisdiction. In *TNB Fuel Services Sdn Bhd*, the arbitral tribunal had been fully constituted and was ready to hear the respondent's jurisdictional challenge. This is not the case in the present instance.

[37] I am of the view that, even if I were to remit this case to an arbitral tribunal for it to exercise the powers conferred by s 18 of the Arbitration Act 2005 and to determine the extent of its jurisdiction in this matter, the tribunal will come to same conclusion as I have, resulting in City-Lite, as the plaintiff in the other action, having to eventually file a fresh action (as a stay granted under s 10 would be a final stay of all current proceedings). The balance of convenience here would therefore be in favour of the respondent, City-Lite.

[38] For the reasons set out above, I am constrained to rule for the application by Y&Y under s 10(1) of the Arbitration Act 2005 for a stay of Civil Suit No 22C-28–05 of 2014 to be dismissed, with each party to bear their own costs in this current action.

Application dismissed.

Reported by Afiq Mohamad Noor